

**SANTA CLARA VALLEY
WATER RESOURCES PROTECTION COLLABORATIVE**

**MEMORANDUM OF CONSENSUS FOR MUTUAL COOPERATION
TO JOINTLY DEVELOP AND IMPLEMENT WATER AND
WATERSHED RESOURCES PROTECTION MEASURES, GUIDELINES
AND STANDARDS IN SANTA CLARA COUNTY**

Ratified July 24, 2003

**Santa Clara Valley Water District, City of Campbell, City of Cupertino,
City of Gilroy, City of Los Altos, Town of Los Altos Hills, Town of Los
Gatos, City of Milpitas, City of Monte Sereno, City of Morgan Hill, City
of Mountain View, City of Palo Alto, City of San José, City of Santa
Clara, County of Santa Clara, City of Saratoga, City of Sunnyvale,
Guadalupe-Coyote Resource Conservation District, Santa Clara County
Farm Bureau, Silicon Valley Manufacturing Group, Home Builders
Association of Northern California, San Jose Silicon Valley Chamber of
Commerce, CLEAN South Bay, The Leagues of Women Voters of Santa
Clara County, Santa Clara Valley Audubon Society, and Families for Fair
Government**

Facilitated by

CONCUR, Inc.

**Scott McCreary, Ph.D., Principal-in-Charge, James Lewis, J.D., Project
Manager**

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WHEREAS, the Santa Clara Valley Water District ("SCVWD"), along with staff representatives of the County of Santa Clara ("County"), the Cities in Santa Clara County ("City," "Cities"), the Guadalupe-Coyote Resource Conservation District ("GCRCD"), the San Francisco Bay Regional Water Quality Control Board, various business and development interests, environmental and community interests, and a representative of property owners' interests have formed and are members of the Santa Clara Valley Water Resources Protection Collaborative ("Collaborative"); and,

WHEREAS, all Collaborative members share the water and watershed resources protection goals of flood management, drinking water quality and adequate quantity, surface and groundwater quality and quantity, and habitat protection and enhancement; and

WHEREAS, it is recognized that the SCVWD, Cities and County through Implementation of their National Pollutant Discharge Elimination System (NPDES) Permits, Best Management Practices and other means have continuously acted to protect the watersheds, water quality and water resources in Santa Clara County; and

WHEREAS, the SCVWD, Cities, County and GCRCD are committed to furthering these goals through the implementation of existing policy, and the timely adoption by the SCVWD, Cities and County of land development policy, guidelines and standards developed collaboratively with other stakeholders; and

WHEREAS, in order to accomplish these goals, the Collaborative recognizes the importance of the interests and principles of: delineation of responsibility for administering collaboratively developed policies, guidelines, and standards, as may be

approved, to which SCVWD, County and City activities and permit review shall conform; monitoring and accountability; and private creek-side property owners; and

WHEREAS, it is recognized that local control is the key principle to the implementation of resource protection goals, that Cities and the County are the primary jurisdictions for land use planning and land use permit regulation; and

WHEREAS, the broader stakeholder community has an important role in local stewardship and enhanced resource protection; and

WHEREAS, the Collaborative has reached consensus on Foundational Principles and Key Elements to guide cooperative efforts aimed at enhanced water and watershed resources protection.

NOW, THEREFORE, this consensus is set forth as follows.

Section I

Collaborative Process

1. In furtherance of its responsibilities for achieving the goals of watershed stewardship and comprehensive management of water resources, providing safe and adequate drinking water, ensuring surface and groundwater quality and quantity, protecting and enhancing riparian habitat and providing effective management of flood risks, the SCVWD Board has considered amendments to its Ordinance 83-2. These amendments were intended to better achieve water and watershed resources protection goals by extending SCVWD permitting jurisdiction to sensitive groundwater areas, as well as areas located beyond its traditional jurisdictional boundary of 50 feet from SCVWD facilities and stream resources within Santa Clara County.
2. The Cities and County raised concerns regarding these proposed revisions to Ordinance 83-2, based upon the primacy of their own jurisdiction over planning and permitting within their respective jurisdictions, as well as their history of responsible actions protecting water resources through the exercise of these planning and permitting activities.
3. The Cities and County were also concerned that proposed revisions to Ordinance 83-2 might conflict with recently imposed requirements under

Section C. 3. of the National Pollution Discharge Elimination System Permit, under which the SCVWD, County and Cities within the jurisdiction of the San Francisco Bay Regional Water Quality Control Board are co-permittees, or prospective Phase II regulations to be developed by the Central Coast Regional Water Quality Control Board, to be applicable to the cities of Morgan Hill and Gilroy.

4. In response to those concerns, it was agreed that a collaborative, named the Santa Clara Valley Water Resources Protection Collaborative, would be formally convened for a 6 month period beginning on February 20, 2003. In order to represent as broad a range of interests as possible, while maintaining a manageable and effective size, the Collaborative's membership was ultimately agreed to include:

- 15 municipalities (1 or 2 representatives each)
- County of Santa Clara (2 representatives)
- SCVWD (3 representatives)
- Regional Water Quality Control Board, SF Bay Region (1 representative)
- GCRCD (1 representative)
- Santa Clara County Farm Bureau (1 representative)
- Environmental/Community Interests (3 representatives)
- Business/Development Interests (3 representatives)
- Property Owner Interests (1 representative)

5. The Collaborative was formally convened on February 20, 2003, and met thereafter on each of the following dates: March 27, April 17, May 22, June 26, and July 24. The Collaborative's work began with the formal ratification of a Mission and Ground Rules, to focus and to guide its efforts. The Collaborative's work continued with the definition of water and watershed resources protection problems by the SCVWD. Once these problems were clearly identified, and the common interests of the Collaborative members in enhancing their ongoing and responsible stewardship of these resources were confirmed, the Collaborative convened Work Teams to address specific issues to inform the Collaborative's further deliberations.

Section II

Foundational Principles and Key Elements

Based on the foregoing, the Collaborative members, individually and collectively, agree on the following Foundational Principles and Key Elements:

Foundational Principles

1. All Collaborative members share the following four water and watershed resource protection goals:
 - a. Flood Management
 - b. Drinking Water Quality and Adequate Quantity
 - c. Surface and Groundwater Quality and Quantity; and
 - d. Habitat Protection and Enhancement
2. The SCVWD, Cities and County, through implementation of their National Pollutant Discharge Elimination System (NPDES) Permits and other permits, Best Management Practices and other means have continuously acted to protect the watersheds, water resources and water quality in Santa Clara County.
3. The SCVWD, Cities and County are committed to furthering these goals through the implementation of existing policy, and the timely adoption of additional land development policy, guidelines and standards jointly developed with other stakeholders.
4. In order to accomplish these goals, the Collaborative recognizes the importance of the following interests:
 - a. Implementation of City and County General Plans; and
 - b. Private creekside property owners' rights and interests; and
 - c. Delineation of responsibility for administering such mutually agreed-upon policy, guidelines and standards, as may be approved, to which the activities and permit review by the SCVWD and Cities and County shall conform.
5. Local control is the key principle to implement resource protection goals.
 - a. The broader stakeholder community has an important role in local stewardship and enhanced resource protection.
 - b. The Cities and the County are the primary jurisdictions for land use planning and land use permit regulation.
6. Monitoring and accountability is necessary in order to assure the effectiveness of the resulting water and watershed resources protection measures.

Key Elements

A. PLANNING

1. **The SCVWD, Cities, County and the GCRC D Embrace the Water and Watershed Resources Protection Objectives of the Collaborative; and Collaborative Members Intend To Develop and To Recommend Approval in a Timely Manner by the SCVWD, Cities and County of Policies, Guidelines and Standards in Order to Protect These Resources.**

The Collaborative recognizes the common interests of all Collaborative members in the protection and enhancement of water and watershed resources, including groundwater, surface water, and the habitat associated with waterways within Santa Clara County.

In order to enhance the protection of these resources, and to progress towards more uniform requirements for their protection, the SCVWD, Cities and County, together with interested stakeholders, should work in partnership to collaboratively develop policies, guidelines and standards in a timely manner. As may be adopted, these policies, guidelines and standards will be implemented through the SCVWD's, Cities' and County's respective planning and permitting functions, and be applied to their own capital projects and operations and maintenance activities.

2. **Joint Development of Strategic Plans, including a SCVWD Strategic Plan.**

The Collaborative recognizes that long-range goals for the protection and enhancement of water and watershed resources are achieved most effectively through the coordination and consistency of strategic planning efforts undertaken by the SCVWD, Cities and County. Long-range planning activities of the SCVWD, Cities and County should be undertaken with the maximum possible consultation and early involvement of each other. Likewise, the Collaborative recognizes the importance of a SCVWD Strategic Plan in setting a vision and policy framework for water and watershed resources protection throughout Santa Clara County, and urges the SCVWD to expand its own strategic planning activities in as comprehensive a manner as possible.

3. **Acknowledgment of Differing Environmental Resources.**

Recognition of the diversity of water and watershed resources throughout the County is a Key Element in the successful collaborative development of policies, guidelines and standards for the protection of these resources. The Collaborative

recognizes that different localities within the County, such as rural and urban, may require different solutions with respect to water and watershed resources protection, and that this recognition should be a fundamental consideration in the joint development of policy, guidelines and standards for resources protection.

B. PERMIT REGULATION

1. Delineation of Responsibility for Resources Protection to the Cities and County/Collaborative Development of Guidelines and Standards.

As the Collaborative clearly acknowledges the primacy of the Cities' and County's authority over land use planning and permitting, it also recognizes the need to work in partnership with the SCVWD and interested stakeholders to collaboratively develop policies, guidelines and standards in order to continually enhance the protection of water and watershed resources within Santa Clara County. This process is intended to ensure that SCVWD responsibilities for the protection and enhancement of these resources will be implemented in a consistent manner, and will demonstrate to the citizens of Santa Clara County, and to state and Federal agencies, local leadership in the stewardship of these resources.

2. Clear Identification of Respective Roles/Responsibilities, including the Reciprocal Early Consultation Among the SCVWD, Cities and County in Development Review.

By recognizing the primacy of the Cities' and County's authority over land use planning and permitting, and the legitimacy and importance of the SCVWD's mission and responsibilities, the Collaborative is seeking to clarify the roles and responsibilities of the SCVWD, Cities, County, GCRCD, and stakeholder groups and organizations.

The need for clarification is reflected in the Foundational Principles enumerated above, as well as the key relationship between the delineation of responsibility for resources protection to the Cities and County, and the joint development of policies, guidelines and standards by the SCVWD, Cities, County and interested stakeholders.

As guidelines and standards are developed, the early consultation of the SCVWD, Cities and County in each others' development review will help build a stronger foundation of mutual understanding of how water and watershed resources protection can be implemented through their planning and permitting. For that reason, the Collaborative will undertake a pilot project between the SCVWD and selected Cities, on a voluntary basis, to explore and to develop enhanced procedures for the mutual consultation in each others' planning and permitting activities.

3. **SCVWD Staff Will Recommend that the SCVWD Board Hold Ordinance Revisions in Abeyance Subject to a Timeline for the Development and Implementation of Guidelines and Standards.**

Controversy over the nature and scope of proposed revisions to the SCVWD's Ordinance 83-2 acted as a catalyst for the convening of the Collaborative. A Key Element of the Collaborative's consensus, therefore, is the SCVWD Board holding in abeyance its enactment of any ordinance revisions without the consensus of the Collaborative, subject to a reasonable timeline, as set forth below in Section C. This timeline is intended to provide for the development and, as may be approved, implementation of selected guidelines and standards jointly developed by the SCVWD, Cities, County, GCRCD and interested stakeholders. This Element is intended to preserve the *status quo* regarding permitting near SCVWD facilities and streams within Santa Clara County while Collaborative members undertake the development of guidelines and standards that will subsequently be administered by the SCVWD, Cities and County.

C. WORK PRODUCTS AND MILESTONES

In recognition of the commitment of Collaborative members to the timely implementation of the objectives of this Memorandum, the following process, timeline and milestones are agreed to:

1. The Santa Clara County Water Resources Protection Collaborative shall continue to meet for one year on a quarterly basis, and serve to assess and to direct progress towards the following quarterly milestones, commencing August 1, 2003. The Collaborative will report its progress towards these milestones, and the overall goals of the Collaborative, on a quarterly basis to the SCVWD Board:
2. First Quarter Milestones shall include:
 - a. Adoption of a Resolution of Support of this Memorandum by the governing bodies and/or constituencies of the Collaborative members;
 - b. SCVWD completion of a compendium of existing SCVWD policies pertaining to the water and watershed resources protection goals of the Collaborative;
 - c. Commencement of a Pilot Project between the SCVWD and selected Cities, on a voluntary basis, to explore and to develop

enhanced procedures for involving the SCVWD, Cities and County in each others' planning and permitting activities on a consultative basis;

- d. Preparation of a definition of "**surface and groundwater quality and quantity**," for purposes of developing an Outline of Guidelines and Standards for the protection of such resources.
- e. Preparation of an Outline of water and watershed resources protection Guidelines and Standards for **land use near streams**.
- f. Development of a process, scope and timeline for the completion of a SCVWD Strategic Plan.

2. Second Quarter Milestones shall include:

- a. Preparation of an Outline for Guidelines and Standards for the protection of **surface and groundwater quality and quantity**.
- b. Evaluate progress, scope and timeline for SCVWD Strategic Plan.

3. Third Quarter Milestones shall include:

- a. Continuing Collaborative assessment and direction of the development of Guidelines and Standards for **land use near streams** and for the protection of **surface and groundwater quality and quantity**; and
- c. Preparation of an Outline for Implementation and Adaptive Management Strategies.
- d. Evaluate progress, scope and timeline for SCVWD Strategic Plan.

4. Fourth Quarter Milestones shall include:

- a. Completion of Guidelines and Standards for **land use near streams**, and for the protection of **surface and groundwater quality and quantity**;
- b. Completion of a Pilot Program Report, which will include recommendations for enhanced procedures for involving the

SCVWD, Cities and County in each others' planning and permitting activities county-wide, in a consultative capacity; and

- c. Timeline for completion of Implementation and Adaptive Management Strategies, and designation of an appropriate Implementing Body to oversee the Adaptive Management Plan, including public outreach.
- d. Evaluate progress, scope and timeline for SCVWD Strategic Plan.

D. MONITORING, ASSESSMENT AND ADAPTIVE MANAGEMENT BY AN APPROPRIATE IMPLEMENTING BODY

Throughout the Collaborative's proceedings, there has been the recognition that the successful implementation of any policies, guidelines or standards intended to protect water and watershed resources depends upon the development of appropriate means to monitor and assess the effect of adopted measures. In addition it is necessary to provide some means to revise those measures as needed in order to achieve and enhance resources protection.

Accordingly, a Key Element in the joint development of guidelines and standards is the designation of performance measures and monitoring strategies that can be successfully employed to gauge the effectiveness of adopted measures. Of equal importance is the designation of an appropriate Implementing Body to review the results of monitoring and assessment of policies, guidelines and standards, as may be adopted, and to propose revisions to those policies, guidelines and standards which will enhance resources protection, or prove to be more practical and cost-effective while advancing resources protection goals.

E. RESOURCE COMMITMENTS

In order to achieve the Milestones described in Section C, Collaborative members agree to continued participation, on the quarterly schedule set forth above. The Collaborative's responsibility at these quarterly meetings will be to assess and direct progress towards enumerated Milestones, and to review, revise and ratify Work Products presented for the Collaborative's consideration. Quarterly meetings may be full day meetings, when necessary, but shall otherwise be scheduled as half-day meetings.

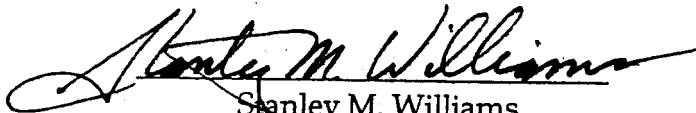
Additionally, on a strictly voluntary basis, the SCVWD, Cities, County, other organizations represented in the Collaborative, and interested stakeholders may participate in such Technical Advisory Committees, or other Work Teams, as may be

convened on behalf of the Collaborative in order to develop the Work Products required at each quarterly Milestone.

NOW, THEREFORE, in recognition of the foregoing, the undersigned signify that they have (1) participated in the Collaborative, (2) that this Memorandum accurately reflects the consensus reached among Collaborative members regarding Foundational Principles and Key Elements, including the quarterly Milestones of Section C. above, to guide cooperative efforts aimed at enhanced water and watershed resources protection, and (3) that they will act in good faith to recommend approval of a Resolution of Support of this Memorandum by their respective governing bodies and/or constituencies.

Ratified this 24th day of July, 2003.

Santa Clara Valley Water District



Stanley M. Williams
Chief Executive Officer

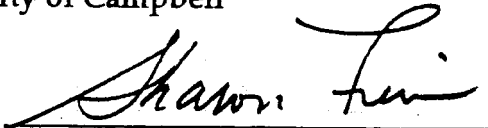


James M. Fiedler
Deputy Operating Officer
Watershed Management Division



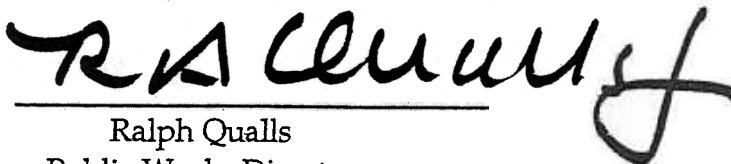
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Assistant Operating Officer
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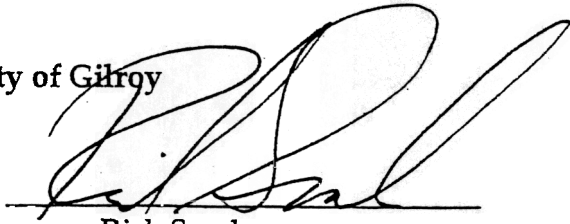
Sharon Fierro
Community Development Director

City of Cupertino



Ralph Qualls
Public Works Director

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Rick Smelser
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Philip Rose
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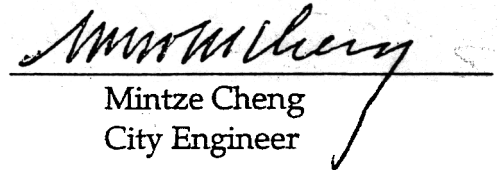


James Porter
Director of Public Works

Town of Los Altos Hills




Carl Cahill
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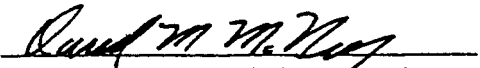
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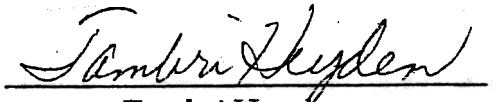


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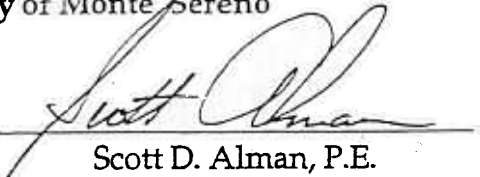


David M. (Mike) McNeely
City Engineer



Tambri Heyden
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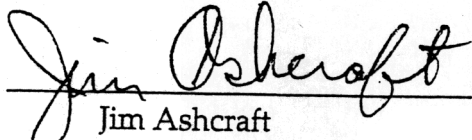
City of Monte Sereno



Scott D. Alman, P.E.
Director of Public Works/City Engineer

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City of Morgan Hill


Jim Ashcraft
Public Works Director

City of Mountain View



Cathy R. Lazarus
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City of Palo Alto


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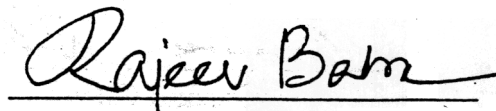

Julie Caporagno
Advance Planning Manager

City of San José



Carl Mosher
Director Environmental Services
Department

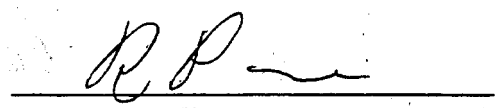

Laurel Prevetti
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Rajeev Batra
City Engineer

County of Santa Clara


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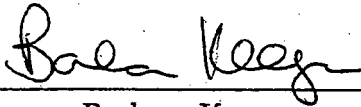

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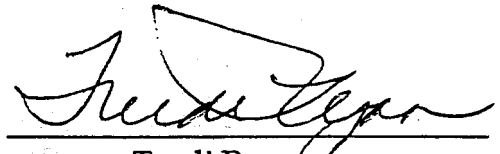


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City of Sunnyvale

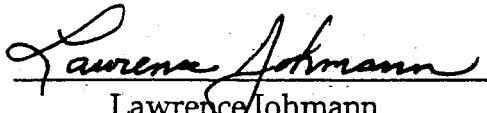


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Assistant Director of Public Works



Trudi Ryan
Planning Officer

Guadalupe-Coyote Resource Conservation SCVWD




Lawrence Johmann
Board Member

Santa Clara County Farm Bureau

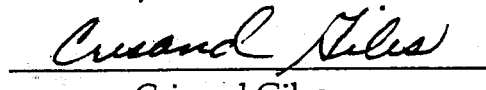


Jenny Derry
Executive Director

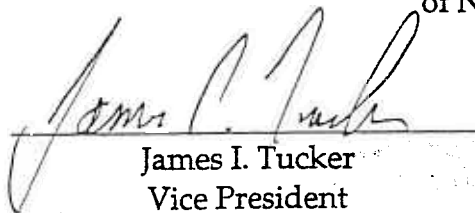
Business/Development Interests



Margaret V. Bruce
Director, Environmental Programs
Silicon Valley Manufacturing Group

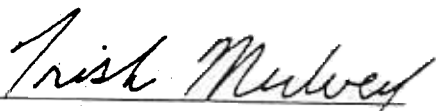


Crisand Giles
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James I. Tucker
Vice President
San Jose Silicon Valley Chamber of Commerce

Environmental/Community Interests



Trish Mulvey
Co-Founder
CLEAN South Bay

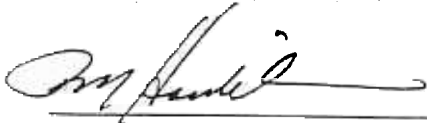


Ann Coombs
The Leagues of Women Voters
of Santa Clara County



Craig Breon
Executive Director
Santa Clara Valley Audubon Society

Families for Fair Government



Michael Houlihan

Collaborative Process Addendum

1. On December 11, 2002, the City of Cupertino funded, and together with the SCVWD convened, a meeting to discuss the initiation of a collaborative process to address resource protection goals, and potential jurisdictional conflicts associated with achieving those goals. Planning and Public Works officials from Local Agencies were invited to the meeting, as well as numerous representatives of other governmental and non-governmental organizations and stakeholders with interests in water and watershed resources protection. CONCUR, Inc., ("CONCUR") an environmental mediation firm with experience in facilitating multi-stakeholder processes, was invited to give a presentation concerning collaborative processes, and to answer questions regarding possible options for convening and conducting a formal collaborative process addressing identified concerns and issues.
2. Cupertino Vice-Mayor Sandra James opened that meeting, and following introductory remarks by Cupertino Public Works Director Ralph Qualls and SCVWD CEO Stan Williams, CONCUR Principal Scott McCreary outlined potential advantages of a facilitated, collaborative approach to coordinating the interests of the SCVWD, Local Agencies and interested stakeholders. At the conclusion of that meeting, the SCVWD agreed to consider funding a Situation Assessment, to be conducted by CONCUR for presentation at a further meeting on January 16, 2003.

As explained during the meeting, the Situation Assessment would be based upon as many interviews of key participants at the December 11 meeting as possible, and its conclusions would be summarized in a Convening Report. The Convening Report would include recommendations concerning the amenability of controversy to collaborative solution, and options and recommendations for the composition and general mission of a collaborative process. A Steering Committee was designated to work on administrative details in the meantime, and to provide preliminary revision and comment on the Draft Convening Report, Meeting Agendas, and other CONCUR work products. The Steering Committee continued to serve in this capacity throughout the Collaborative's proceedings.

3. On January 16, 2003, the Convening Report was presented, and the composition and general mission of a collaborative were agreed upon, to be funded by the SCVWD. The decision to formally convene a collaborative was made by the consensus decision of the participants at that meeting, which again included Planning and Public Works officials from Local Agencies, as well as representatives of other governmental and non-governmental organizations and stakeholders.

4. In order to compose the membership of the Collaborative, SCVWD CEO Stanley M. Williams sent letters to the City Managers/County Executive of the Cities and County, as well as the San Francisco Bay Regional Water Quality Control Board and the GCRCD, inviting their participation, and requesting the formal designation of representatives to the Collaborative. Interested representatives of the Santa Clara County Farm Bureau, Environmental/Community Interests, Business/Development Interests, and Property Owner Interests who had participated in initial meetings were invited to "self select" appropriate representatives to serve on the Collaborative.
5. On May 22, 2003, based upon its work to date, the Collaborative ratified a document entitled "Elements of Collaborative Agreement," (Attachment D), which outlined Foundational Principles and Key Elements upon which an agreement among its members could be based.
6. On June 26, 2003, the Collaborative reviewed and revised the specific language of this Memorandum, which is based upon the ratified "Elements of Collaborative Agreement." The Collaborative also reviewed and revised a uniform Resolution to accompany the Agreement for the consideration of the governing bodies and/or constituencies of the Collaborative members.